

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

SUQUAMISH TRIBE, KITSAP
CITIZENS FOR RESPONSIBLE
PLANNING, and JERRY HARLESS,

Petitioners,

v.

KITSAP COUNTY,

Respondent,

CITY OF POULSBO,

Intervenor.

Case No. 07-3-0019c

(Suquamish II)

ORDER FINDING COMPLIANCE
[Re: Ordinance Nos. 493-496]

I. PROCEDURAL BACKGROUND

Kitsap County adopted the 10-year update of its comprehensive plan in 2006 (2006 Plan Update) with the enactment of four ordinances. Petitioners filed petitions for review challenging provisions of Ordinances 370-2006 and 367-2006¹ on various grounds. The Board's Final Decision and Order (FDO), issued August 17, 2007, found the County's use of four dwelling units per acre in its UGA low-density residential zones to be an appropriate urban density and approved the County's land capacity analysis.

The Court of Appeals reversed in part and remanded under an opinion published as *Suquamish Tribe v. Central Puget Sound Growth Management Hearings Board*, 156 Wn.App. 743, 235 P.3d 812 (2010). The Court ruled:

¹ Ordinance 367-2006 adopted the Rural Wooded Incentive Program which has since been repealed and is no longer at issue in this case. Order of Partial Dismissal on Remand [Rural Wooded Incentive Program] (May 10, 2011).

1 The Board erred when it used a bright-line rule to approve the minimum urban
2 density of four dwelling units per acre in Kitsap County.²

3 The Court further ruled the Board's reliance on a bright-line urban density resulted in failure
4 to decide issues necessary to the resolution of the case:

5 We remand to the Board for it to consider whether

- 6 (1) local circumstances show that four dwelling units per acre is an
7 appropriate urban density in Kitsap County at this time,
8 (2) reducing minimum density is internally inconsistent with the
9 comprehensive plan goals, and
10 (3) reducing minimum density is consistent with the GMA's goals.³

11 We remand for the Board to decide, based on current local circumstances,
12 and without reliance on the four dwelling units per acre bright line rule,
13 whether the County "double-dipped."⁴

14 If local circumstances support a minimum urban density of four dwelling units
15 per acre, the Board must also decide whether the County creates
16 inconsistencies with the GMA's goals, the Buildable Lands Report [BLR], and
17 the plan when it uses such a minimum density in the land capacity analysis.⁵

18 Following briefing and argument, the Board entered its Final Decision and Order on
19 Remand on August 31, 2011. The FDO on Remand found the County's 2006 Plan Update
20 non-compliant in two respects:⁶

- 21 • Kitsap County failed to comply with RCW 36.70A.110 and RCW
22 36.70A.070 (preamble) and was not guided by RCW 36.70A.020(1) and
23 (2) when it adopted the portions of Ordinance[s] 370-2006 [and 367-2007]
24 reducing the minimum density in the UL/UC designations and expanding
25 the UGA boundaries based on the reduced density in its land capacity
26 analysis. Because they were not adopted in compliance with the GMA,
27 these provisions of Ordinance[s] 370-2006 [and 367-2007] were **clearly**
28 **erroneous** in view of the entire record before the Board and in light of the
29 goals and requirements of the GMA.
30 • Kitsap County failed to comply with RCW 36.70A.110 in determining the
31 capacity of its UGAs as set forth in this Order.

32 ² *Id.* at 765.

³ *Id.* at 780.

⁴ *Id.* at 781.

⁵ *Id.*

⁶ FDO on Remand, at 64.

1 The Board remanded the matter to the County, setting a one-year compliance schedule in
2 recognition of the complexity of the matter. The Board did not issue a determination of
3 invalidity. Interim status reports were filed by the County as required during the compliance
4 period.
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7 On September 14, 2012, the Board received Kitsap County's Statement of Action Taken to
8 Comply on Remand (SATC) and Index to the Record on Remand. The Petitioners
9 responded to the County's submittal with only one objection: the County's failure to include
10 the Poulsbo UGA in its restoration of 5 du/ac minimum urban densities and revised land
11 capacity analysis.⁷ The City of Poulsbo moved to intervene and intervention was granted.⁸
12 On October 11, 2011, the Board received responsive briefs from Kitsap County and the City
13 of Poulsbo.
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16 The Compliance Hearing on Remand was convened October 16, 2012 by Margaret
17 Pageler, presiding officer, in the Kitsap County Commissioners' Conference Room in Port
18 Orchard. Panelists for the Board were William Roehl and Cheryl Pflug.⁹ Petitioner
19 Suquamish Tribe was represented by its attorney Melody Allen. Petitioner Jerry Harless was
20 present *pro se*. Petitioner Kitsap Citizens for Responsible Planning (KCRP) was
21 represented by its attorney David Bricklin. Mr. Bricklin and Mr. Harless presented the
22 arguments of the petitioners. The County was represented by Deputy Prosecuting Attorney
23 Shelley Kneip, accompanied by County Planner Eric Baker. Intervenor City of Poulsbo was
24 represented by its attorney Jim Haney. A number of public officials and interested citizens
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27 ⁷ Petitioners' Response to County's Status Report/Statement of Actions Taken to Comply (Sept. 28, 2012).

28 ⁸ The Board considered:

- 29 • City of Poulsbo's Motion to Intervene and Declaration of Barry A. Berezowsky in Support of City of
30 Poulsbo's Motion to Intervene (Oct. 4, 2012).
- 31 • Petitioners Kitsap Citizens for Responsible Planning and Jerry Harless's Motion for Leave to File
32 Supplemental Briefing (Oct. 11, 2012).
- Kitsap County's Opposition to Petitioners' Motion to Submit Supplemental Briefing, Oct. 12, 2012.
- City of Poulsbo's Response to Petitioners' Harless and KCRP's Motion for Supplemental Briefing (Oct.
12, 2012).

⁹ Board member James McNamara, formerly on this panel, has resigned from the GMHB. Cheryl Pflug has been appointed by Governor Gregoire to fill the Board vacancy for a member from the Central Puget Sound region.

1 attended the hearing.¹⁰ Court reporting services were provided by Sherrilyn Smith of Buell
2 Realtime Reporting, LLC.

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4 The hearing afforded each party the opportunity to emphasize the most cogent facts and
5 arguments relevant to compliance. Board members asked questions seeking to thoroughly
6 understand the history of the proceedings, the important facts in the case, and the legal
7 arguments of the parties. At the hearing, the City of Poulsbo provided a copy of Volume I of
8 the Poulsbo Sub-Area Plan (Final Draft December 17, 2001), adopted in 2002 by Kitsap
9 County and the City of Poulsbo. The Board takes official notice of the Poulsbo Sub-Area
10 Plan pursuant to WAC 242-03-630(4).
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12 **II. BURDEN OF PROOF**

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14 Following a finding of noncompliance, the jurisdiction is given a period of time to adopt
15 legislation to achieve compliance.¹¹ After the period for compliance has expired, the Board
16 is required to hold a hearing to determine whether the local jurisdiction has achieved
17 compliance.¹² For purposes of Board review of the comprehensive plans and development
18 regulations adopted by local governments in response to a noncompliance finding, the
19 presumption of validity applies and the burden is on the challenger to establish the new
20 adoption is clearly erroneous.¹³ Here, the Board declined to impose invalidity. Petitioners
21 thus bear the burden to establish the County's compliance action is clearly erroneous. In
22 order to find the County's action clearly erroneous, the Board must be "left with the firm and
23 definite conviction that a mistake has been made".¹⁴
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30 ¹⁰ Attendees included Kitsap County Commissioners Charlotte Garrido and Robert Gelder, City of Poulsbo
31 Mayor Becky Erickson and Planning Director Barry Berezowsky, Kitsap County Department of Community
32 Development staff Angie Silva, Irwin and Judith Krigsman, and others.

¹¹ RCW 36.70A.300(3)(b).

¹² RCW 36.70A.330(1) and (2).

¹³ RCW 36.70A.320(1), (2) and (3)

¹⁴ *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

1 Within the framework of state goals and requirements, the Board must grant deference to
2 local governments in how they plan for growth.¹⁵ However, the Board's role in compliance
3 proceedings is not identical to that during initial consideration of a Petition for Review. When
4 the Board has identified non-complying provisions of a local jurisdiction's plan or
5 regulations, the jurisdiction is under an obligation to bring those provisions into compliance
6 and the Board is required to make a determination as to compliance.¹⁶ Consequently, the
7 Board reviews all of the County's actions regarding the remanded issues, whether or not
8 challenged by Petitioners.¹⁷

11 III. DISCUSSION

12 The Remanded Issues

13 In the FDO on Remand the Board ruled:

- 15 • Reducing minimum densities from 5 du/ac to 4 du/ac in the Urban Low
16 and Urban Cluster (UL/UC) residential designations was inconsistent with
17 local circumstances, inconsistent with the comprehensive plan, and
18 inconsistent with GMA Goals 1 and 2.¹⁸
- 19 • The minimum density reduction caused expansion of the UGA
20 substantially beyond what would otherwise be necessary to accommodate
21 projected population and therefore was non-compliant with RCW

21 ¹⁵ RCW 36.70A.3201, in part: "The legislature intends that the board applies a more deferential standard of
22 review to actions of counties and cities than the preponderance of the evidence standard provided for under
23 existing law. . . . Local comprehensive plans and development regulations require counties and cities to
24 balance priorities and options for action in full consideration of local circumstances."

25 ¹⁶See RCW 36.70A.300(3)(b) and RCW 36.70A.330 as well as *Abenroth, et al. v. Skagit County*, Case No. 97-
26 2-0060c, coordinated with *Skagit County Growthwatch, et al. v. Skagit County*, Case No. 07-2-0002, Order on
27 Reconsideration, (Jan. 21, 2009).

28 ¹⁷*Abenroth*, at 4-6 (emphasis added): "RCW 36.70A.300(3)(b) is explicit. It requires Skagit County to comply
29 with the GMA in areas where the Board's August 6, 2007, Order found noncompliance The issue in
30 compliance proceedings is somewhat different than it is during an original adoption. In compliance
31 proceedings, the Board has identified an area of the local jurisdiction's comprehensive plan or development
32 regulations that do not comply with the GMA. The local jurisdiction is under an obligation to bring those areas
into compliance and demonstrate that fact to the Board While the ordinance that is adopted to cure non-
compliance is entitled to a presumption of validity, nevertheless, the local jurisdiction must still demonstrate to
the Board that it has addressed the area of noncompliance identified in the FDO. A mere lack of objection by
the petitioner does not demonstrate that the non-compliant provision has been cured. . . . **Even though**
Petitioners did not point out that the County had not taken action to comply pursuant to RCW
36.70A.300(3)(b), it does not relieve the County of its responsibility to comply with the requirements of
the Growth Management Act or the Board of its responsibility to determine compliance pursuant to
RCW 36.70A.330(1) and (2)."

¹⁸ FDO on Remand at 28, 47.

1 36.70A.110 and RCW 36.70A.070 (preamble) and was not guided by
2 RCW 36.70A.020(1) and (2).¹⁹

- 3 • Use of 4 du/ac minimum density as a Land Capacity Analysis (LCA)
4 multiplier for UL/UC designations was not a supportable measure of
5 capacity based on local circumstance and consistent with the GMA goals,
6 the BLR and the comprehensive plan.²⁰
- 7 • Application of a double discount for critical areas in the Urban Restricted
8 (UR) designation was clearly erroneous.²¹

9 **The County's Compliance Action**

10 On remand, Kitsap County undertook a thorough re-analysis of UGA development capacity
11 and boundaries, with the intent not only to bring its 2006 Plan Update into compliance but
12 also to provide a firm basis for subsequent GMA requirements.²² The County conducted a
13 "Trends Analysis" to identify current local circumstances indicating appropriate urban
14 densities in each land use designation. The County then adopted a 5 du/ac minimum
15 density for the UL/UC residential designations that make up 70% of the UGA acreage and
16 had been reduced from 5 du/ac to 4 du/ac in the 2006 Plan Update.

17 The County revised its Land Capacity Analysis, based on the 2004 Countywide Planning
18 Policy (CPP) population projections but informed by the 2010 census data and the trends
19 analysis. Based on this review, the County adjusted its deductions for public facilities, its
20 "underutilized land" calculation for vacant platted lots, its projected capacities for West and
21 East Bremerton UGAs, and its density multiplier for UR lands (from the 1 du/ac minimum
22 used in 2006 to the median allowed density of 2.5 du/ac). These changes, the County
23 believes, have "truthed" the variables used in the land capacity methodology based upon
24 actual development data, thus providing a foundation for the next GMA update and well as
25 for current compliance.
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¹⁹ FDO on Remand, at 37-38.

²⁰ FDO on Remand, at 61-62.

²¹ FDO on Remand, at 50-51.

²² The County's SATC looks ahead to OFM population allocation and CPP update in 2013, BLR update in 2015, and 8-year Plan Updates in 2016. SATC, at 13 n.29.

1 Next, the County reviewed each of the UGAs where the 5 du/ac minimum had been
2 reduced in 2006²³ and reshaped the boundaries, taking into consideration:

- 3 • annexations since 2006
- 4 • existing or vested development at urban levels
- 5 • feasibility of sewer service
- 6 • abundance of critical areas
- 7

8 The UGA was extended in places but, overall, the County's action removed 21% of the total
9 UGA acreage established in 2006. The County made correlative changes to its capital
10 facilities plan, its zoning regulations and its water and sewer regulations.
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12 **Petitioners' Objection**

14 Petitioners commend the County's compliance response generally and its community
15 outreach, including to Petitioners, in particular. However, Petitioners KCRP and Harless
16 assert the County's exclusion of the Poulsbo UGA from its amendment fails to comply with
17 the Board's rulings regarding both minimum density and land capacity analysis. These
18 Petitioners urge the Board to enter an order of partial compliance and remand for correction
19 of the Poulsbo UGA.²⁴
20

21 **Board Discussion and Analysis**

- 22 • *Minimum Urban Density and UGA Size*

24 The FDO on Remand determined local circumstances did not support the County's action in
25 reducing minimum densities in its UL/UC designation from 5 du/ac to 4 du/ac, and
26 concluded that the resultant UGA expansions violated RCW 36.70A.110, .070 (preamble),
27 and .020(1) and (2). On remand, the County has conducted a trends analysis, has
28 determined that local circumstances did not support a reduction of minimum densities in the
29 UL/UC designations, and has restored the minimum densities to 5 du/ac. The County's
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32 ²³ The County did not include the Poulsbo UGA in the re-sizing. The Poulsbo UGA had not been expanded in 2006 and its 4 du/ac minimums were not a result of the 2006 downzoning.

²⁴ Petitioner Suquamish Tribe at hearing indicated no objection to a finding of compliance for the County.

1 action thus complies with GMA requirements for determination of “appropriate urban
2 densities.”

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4 Similarly, the County’s re-sizing of UGAs complies with RCW 36.70A.110. Rather than
5 downsize its expanded UGAs uniformly to correspond to the restored minimum densities,
6 the County conducted a fine-scale review of UGA boundaries, in view of 2010 census data,
7 annexations and proposed incorporations, vested and platted development, critical areas,
8 and feasibility of providing sewer service. In adjusting UGA boundaries, the County sought
9 to include within the UGA those areas likely to develop at urban levels with urban services.
10 The UGA boundary revisions removed 21% of the total UGA acreage established in 2006,
11 while still accommodating the projected population. The County states: “Properties that
12 remain in the UGA are logical urban properties that have current urban character and can
13 be served by urban services.”²⁵
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16 Petitioners contend the County failed to fully comply because it omitted consideration of the
17 Poulsbo UGA. Minimum urban densities in Poulsbo’s UGA remain at 4 du/ac and the
18 County has neither raised these minimums to 5 du/ac nor reduced the size of the Poulsbo
19 UGA. Poulsbo and the County point out that minimum densities in Poulsbo’s UGA were set
20 at 4 du/ac in 2002, four years prior to the challenged UGA update and were **not reduced** by
21 the 2006 action. Similarly, the boundary of the Poulsbo UGA was set in 2002 and was **not**
22 **expanded** in the 2006 Update.
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25 The Board recognizes the logic of Petitioners’ argument. However, the Legal Issues raised
26 by Petitioners in this case excluded consideration of the Poulsbo UGA from the outset. The
27 Legal Issues and subsequent Board Orders are limited to County actions that **reduced**
28 minimum densities and **expanded** UGA boundaries – neither action applicable to the
29 Poulsbo UGA.
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²⁵ County SATC at 21.

1 In the Petitions for Review, the Urban Density Legal Issues challenged the **minimum-**
2 **density reductions** and concomitant **UGA expansions** in the 2006 Plan Update as
3 follows:²⁶

4 1. Did Kitsap County ... fail to comply ... by allowing **reduced** urban
5 residential densities, and **expanding** Urban Growth Areas (UGAs) by
6 about 35%, as part of the 10-Year Update to its Comprehensive Plan
7 (Plan Update)...? [Suquamish PFR]

8 1. Did the County ... fail to comply ... when it **reduced** permitted urban
9 residential densities by twenty percent, triggering the otherwise
10 unnecessary **expansion** of several UGAs, as part of the Plan Update ...?
11 [KCRP PFR]

12 On remand from the Court of Appeals, the Legal Issues again specifically challenged the
13 County's "reduction of the minimum density and resultant oversized UGA."²⁷

14
15 1. Is the minimum urban density of four dwellings per acre, reduced from five
16 dwellings per acre by Kitsap County Ordinances 370-2006 and 367-2006,
17 an appropriate urban density for Kitsap County when considering local
18 circumstances; RCW 36.70A.020(1) – (4) and (12); and RCW
19 36.70A.110?

20 2. Did the reduction in permitted urban residential densities result in an
21 internally inconsistent plan in violation of RCW 36.70A.070?

22 3. Did the reduction of the minimum urban densities allowed inside the UGA
23 result in an Urban Growth Area larger than necessary to accommodate
24 the 20-year growth projection, inconsistent with RCW 36.70A.020(1) – (4)
25 and (12)?

26 The Board's FDO on Remand focused on the County's UL/UC land use designations and
27 the County's 2006 reduction of minimum densities from 5 du/ac to 4 du/ac for UL/UC
28 designated lands.²⁸ The Board said the County's downzoning of minimum densities in these
29 designations caused the UGA expansions and was the error that must be corrected: "The
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31 ²⁶ See FDO (Aug. 17, 2007), at 10.

32 ²⁷ Prehearing Order on Remand (May 10, 2011), at 2.

²⁸ FDO on Remand, at 46-47; Conclusions – Minimum Densities: "...reduced UL/UC densities ... reduction of minimum densities ... the minimum density reductions ... the minimum density reductions and concomitant UGA expansion ... the reduced density of 4 du/ac"

1 Board finds that Kitsap's **reduction** of UL/UC minimum densities caused the County to
2 **expand** its UGAs in order to accommodate the projected population."²⁹

3
4 The final summation in the FDO on Remand states Kitsap County failed to comply when it
5 "reduc[ed] the minimum density in the UL/UC designations and **expand[ed]** the UGA
6 boundaries based on the reduced density...."³⁰

7
8 The minimum density in the Poulsbo UGA was **not reduced** in the 2006 Update. Further,
9 the UL/UC designations are not used in the Poulsbo UGA; rather, the County applies
10 Poulsbo's Residential Low-density (RL) zoning.³¹ The Poulsbo UGA was **not expanded** in
11 the 2006 Update. In all, the Board finds the County reasonably concluded the Poulsbo UGA
12 minimum density and boundary was not within the scope of the noncompliance it was
13 required to address on remand.
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- 16 • **The Board finds** the County has restored minimum urban densities in its previously-
- 17 downzoned UGAs to 5 du/ac based on documented local circumstances.
- 18 • **The Board finds** the County reduced its 2006 UGA acreage by 21%, still providing
- 19 sufficient capacity to accommodate the 20-year population projection.
- 20 • **The Board finds** the County's UGA adjustments were guided by RCW
- 21 36.70A.020(1) and (2) and complied with RCW 36.70A.110 and .070(preamble).
- 22 • **The Board finds** Petitioners have not carried their burden of demonstrating the
- 23 County failed to comply by not modifying the Poulsbo UGA minimum density and
- 24 boundary.
- 25 • **The Board finds and concludes** the County's actions in restoring minimum
- 26 densities and reducing the UGA comply with the GMA as set forth in the FDO on
- 27 Remand.
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32 ²⁹ FDO on Remand, at 37.

³⁰ FDO on Remand, at 64.

³¹ While the Board accepts Petitioners' concern that UL and RL designations are similar, the County can hardly be faulted for reading the Board's FDO on Remand literally. Perhaps the Board's Order should have referred to "UL/UC and similar designations," but it did not.

1 • *Land Capacity Analysis*

2 The FDO on Remand determined the County's Land Capacity Analysis was flawed. The
3 Board found the County double-dipped when it discounted twice for constrained lands in its
4 Urban Restricted (UR) designation. The Board also determined, regardless of a bright line
5 rule, 4 du/ac was not an appropriate capacity multiplier in the County's UL and UC
6 designations.
7

8 On remand, the County "truthed" the assumptions in its LCA methodology, including its
9 capacity multipliers for all of its urban zones except the Poulsbo UGA RL. The County
10 adopted a capacity multiplier of 5 du/ac for UL/UC designations. The County did not
11 recalculate a capacity multiplier for the Poulsbo UGA RL designation.³² The County
12 adjusted a number of its discount factors, eliminating the "double-dipping" for UR lands as
13 well as for certain platted lots. The County retained its market factors of 5% for vacant land
14 and 15% for underutilized land. The 25% market factor for the Poulsbo UGA was not
15 adjusted. The Board finds the County's LCA revisions cure the double-dipping and capacity
16 multiplier errors identified in the FDO on Remand.
17

18 As with the minimum density issue, the LCA issues from the outset in this case were framed
19 such that the Poulsbo UGA was excluded. In the Petitions for Review, the Land Capacity
20 Analysis Legal Issues were set forth as follows:³³
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- 24 2. Did the County fail to follow guidance under RCW 36.70A.020(1) (2), and
25 fail to comply with RCW 36.70A.070 (internally consistent plans) and RCW
26 36.70A.110 **by expanding UGAs based on a non-compliant Urban**
27 **Land Capacity Analysis (LCA)**, which results in substantially over-sized
28 UGAs as part of the Plan Update adopted by Ordinance No. 370-2006,
29 thereby promoting sprawl in direct contradiction of the fundamental goals
30 of the GMA? [Suquamish PFR]
31

32 ³² The Board notes the Poulsbo SubArea Plan (2002) states the City's holding capacity was calculated using
the high end of the density range for each land use designation (5 du/ac for RL) and "an average of 5 units per
acre was used in the unincorporated sub area." Poulsbo Sub-area Plan, at 19.

³³ See FDO (Aug. 17, 2007), at 14-15.

- 1 2. Did the County fail to be guided by RCW 36.70A.020(1) and (2), and fail to
2 comply with RCW 36.70A.070 (internally consistent plans) and RCW
3 36.70A.110 when it **expanded several UGAs based on a non-compliant**
4 **Urban Land Capacity Analysis (LCA)**, resulting in an excessively
5 oversized UGA as part of the Plan Update and zoning adopted with
6 Ordinance Nos. 370-2006 and 367-2006? [KCRP PFR]

7 Thus at the outset, the Land Capacity Analysis issues before the Board in this matter were
8 limited to the UGAs expanded in the 2006 Plan Update due to the flawed LCA.

9 After briefing and argument on remand,³⁴ the FDO on Remand summarized the LCA non-
10 compliance as follows: "The Board determined, regardless of a bright line rule, four dwelling
11 units per acre was *not an appropriate capacity multiplier in the County's Urban Low and*
12 *Urban Cluster designations.*"³⁵ The County's action in applying a revised capacity multiplier
13 to the UL/UC designations cures the non-compliance identified in the FDO on Remand.
14 While the Board agrees with Petitioners that a changed LCA methodology will ultimately
15 implicate the Poulsbo UGA, revisions to Poulsbo's RL designation or UGA are not within the
16 required scope of compliance in the present case.³⁶

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19 • **The Board finds** the County has corrected its Land Capacity Analysis by removing
20 the double discount for Urban Restricted lands.
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22 • **The Board finds** the County has corrected its Land Capacity Analysis by revising the
23 capacity multipliers applicable to its UL/UC designations so that they are no longer
24 based on a bright-line formula but reflect local circumstances.
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28 ³⁴ On remand from the Court of Appeals, the LCA issues were stated as follows;

29 5. In the Urban Land Capacity Analysis, is the use of four dwelling units per acre as a uniform
30 assumption for new urban development inside the UGA inconsistent with local circumstances (and
31 thus inconsistent with RCW 36.70A.110 and .215, inconsistent with RCW 36.70A.020(1)-(4) and (12),
32 and inconsistent with the county's comprehensive plan and thus inconsistent with RCW 36.70A.070)?

33 6. Did the use of minimum urban density in the Urban Land Capacity Analysis result in an Urban
34 Growth Area larger than necessary to accommodate the 20-year growth projection inconsistent with
35 goals 1-4 and 12 of the GMA?

36 ³⁵ FDO on Remand, at 2.

³⁶ The County's response lays out the schedule for addressing this recalculation in a coordinated process over
the next several years. See SATC at 13, n.29.

- **The Board finds** Petitioners have not carried their burden of demonstrating the County failed to comply by not applying the revised LCA to the Poulsbo UGA.
- **The Board finds and concludes** the County's revisions to its LCA methodology comply with the GMA as set forth in the FDO on Remand.

IV. FINDING OF COMPLIANCE

Based upon review of the GMA, the remand from the Court of Appeals in *Suquamish Tribe v Central Puget Sound Growth Management Hearings Board*, 156 Wn.App. 743, 235 P.3d 812 (2010), the August 31, 2011 Final Decision and Order on Remand, the County's Statement of Actions Taken to Comply, the briefing and arguments of the parties, and having deliberated on the matter, the Board enters a **Finding of Compliance** for Kitsap County in Case No. 07-3-0019c.

V. ORDER

Based upon the foregoing, the Board ORDERS:

- Kitsap County's adoption of Ordinance Nos. 493-496 corrects the deficiencies found in Ordinance No. 370-2006 and complies with the goals and requirements of the GMA [RCW 36.70A.110, RCW 36.70A.070 (preamble), and RCW 36.70A.020(1) and (2)] as set forth in the Board's August 31, 2011, Final Decision and Order on Remand. The Board therefore enters a **Finding of Compliance** for Kitsap County re Ordinance Nos. 493-496.
- GMHB Case No. 07-3-0019c is **closed**.

Dated this 6th day of November, 2012.

Margaret Pageler, Board Member

William Roehl, Board Member

Cheryl Pflug, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.³⁷

³⁷ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), -840.
A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.
It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.